



Comptroller General  
of the United States

Washington, D.C. 20548

406214

## Decision

**Matter of:** San Diego State University Foundation

**File:** B-250838.3

**Date:** April 21, 1993

James L. Feldesman, Esq., and Edward T. Waters, Esq., Feldesman, Tucker, Leifer, Fidell & Bank, for the protester. James R. Kostoff, Esq., and Forrest F. Wolfe, Esq., Nichols, Stead, Boileau & Kostoff, for California State Polytechnic University, Pomona, an interested party. Margaret Moore, Esq., Frances Moran, Esq., and Jeffrey Morhardt, Esq., Department of Education, for the agency. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Where evaluation was reasonable and consistent with evaluation factors, and solicitation emphasized technical quality over price, agency could properly make award to higher rated proposal despite its higher cost.
2. Protest is denied where the record contains no evidence that the protester was prejudiced by the agency's failure to discuss its concerns over management of part-time employees, since project management was a relatively minor area of the evaluation, and the agency reasonably viewed the awardee as superior in the other three areas of the technical evaluation.
3. Protest that agency relaxed requirement for allocating 50 percent of staff time to training and technical assistance is denied where there is no evidence of prejudice, i.e., that protester would have altered its proposal had it been given the opportunity to do so based on the agency's interpretation of the requirement.

### DECISION

San Diego State University Foundation protests the award of a contract to California State Polytechnic Institute at Pomona (Cal Poly) under request for proposals (RFP) No. RFP-92-044, issued by the Department of Education for the operation of a multifunctional resource center (MRC).

The protester contends that as the lower cost offeror, it should have received award under the solicitation.

We deny the protest.

#### BACKGROUND

On March 24, 1992, the agency issued the solicitation for a cost reimbursement, level of effort contract to design, develop, and operate 16 regional centers for a 1-year period, with two 1-year options. The successful contractor would be responsible for providing training and technical assistance to those participating in bilingual education programs; gathering and providing information to other MRCs on designated areas of bilingual education; coordinating with other programs and federal centers; and incorporating the National Education Goals and Strategies in training and technical assistance.

The solicitation listed 13 tasks as follows: 1) update the baseline management plan; 2) negotiate letters of agreement with state education agencies; 3) outreach and coordination; 4) development of a service delivery plan; 5) implementation of the service delivery plan, including 5.1, training and technical assistance, 5.2, providing degree and credential coursework for staff development, 5.3, providing services for educational administrative personnel, and 5.4, preparation of workshop materials; 6) collection and dissemination of information; 7) MRC staff exchange; 8) staff development activities; 9) evaluation of services; 10) preparation of annual performance reports; 11) monthly reports; 12) inventory of materials; and 13) collaboration with the agency in meetings and institutes.

The solicitation provided for award of separate contracts for each region, based on the proposal most advantageous to the government, cost and other factors considered; technical quality was more important than cost. The solicitation included the following technical evaluation criteria: personnel, 40 points, of which 20 points were for the project director and 20 were for the staff (based on evidence of substantial education, training, and experience in the required tasks); technical quality of the proposal, 40 points (based on adequacy of the technical proposal in responding to the scope of work and in addressing the objectives of the contract); project management, 10 points (strategies for assuring coordination and continuity, mechanisms to provide for quality control, and plans for appropriate and efficient resource utilization); and organizational experience, 10 points (degree to which the offeror provides evidence that the organization has the structure, capability and experience to administer a contract of this scope, size, and complexity).

Region 14 encompassed all counties in California south of San Francisco, excepting Los Angeles and Orange counties; two offerors, the protester and the awardee, submitted proposals for region 14. Three agency evaluators rated the proposals, so that there were a potential 300 total points in the evaluation--120 points each (40 points per evaluator) for personnel and technical quality of the proposal and 30 points each (10 points per evaluator) for projects management and organizational experience.

On July 30, the agency determined that both offerors were in the competitive range for award of a contract for region 14 and began discussions. The agency provided the offerors with written discussion questions and held oral discussions. By letters dated August 21, the agency requested and received best and final offers (BAFO) from the protester and the awardee.

The awardee received a higher score for the technical quality of the proposal, 111 points versus 98 points for the protester. Although the two offerors received nearly identical technical scores in the three remaining technical areas (the protester receiving 108 points for personnel, versus 107 points for the awardee; 24 points for project management, versus 25 points for the awardee; and 28 points for organizational experience, versus 29 points for the awardee), the evaluators reached a consensus that the points scores did not reflect the technical superiority of the proposal from Cal Poly. The evaluators concluded that the 1-point difference in the project management and organizational experience categories understated the superiority of the awardee's proposal; they also found that the protester's 1-point advantage in the personnel area was not meaningful, since it was attributable solely to the qualifications of San Diego State's project manager, and that, in the staffing area, the point scores did not reflect the significantly stronger qualifications of Cal Poly's proposed staff.

Accordingly, on September 28, the chairman of the evaluation committee prepared a narrative assessment for the selection official, in which he recommended Cal Poly for award of the region 14 contract, based on the superiority of its proposal, particularly in technical quality and specificity. The agency awarded a contract to Cal Poly on the next day, and this protest followed.

#### SELECTION DECISION

The protester contends that as the low, acceptable offeror it was entitled to award under the solicitation. Further, the protester argues that the evaluation was unreasonable and inconsistent with the solicitation criteria, in that the

agency utilized unstated evaluation criteria in reviewing San Diego State's proposal.

In a negotiated procurement, such as this one, there is no requirement that award be made on the basis of lowest cost; cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed by the tests of rationality and consistency with the established evaluation factors. Central Tex. College, 71 Comp. Gen. 164 (1992), 92-1 CPD ¶ 121. In reviewing protests against an agency's technical evaluation and selection decision, we examine the record to determine whether the evaluation was reasonable and consistent with the criteria listed in the solicitation. SeaSpace, 70 Comp. Gen. 268 (1991), 91-1 CPD ¶ 179. We find the evaluation here reasonable and consistent with the evaluation criteria; accordingly, the decision to select the higher rated, higher cost offeror was proper.

Under the category of personnel, the evaluators concluded that, in the aggregate, Cal Poly's personnel had stronger qualifications than did the protester's proposed personnel; there was also a position for bilingual coordinator for which the protester was still seeking candidates. In the project management area, the awardee's proposal showed that Cal Poly had a full-time staff, already on board, while the panel had concerns over the protester's procedures for quality control over its part-time personnel.<sup>1</sup> Under organizational experience, Cal Poly proposed a subcontractor currently performing as an incumbent in the same service area; further, Cal Poly had a recognized expertise in telecommunications systems, which could be made available to the resource center for staff communication and coordination.

The superiority of the Cal Poly proposal was most pronounced in the area of technical quality of the proposal, where it had a substantial advantage in the technical scoring. In the narrative assessment, the chairman of the evaluation committee explained that this advantage translated into more specificity in defining the region's perceived needs and the details of service delivery. The awardee provided a discussion of the National Goals that was thorough and directly linked to the center activities. The protester's proposal, by contrast, used outdated models, with little or no

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<sup>1</sup>Specifically, in view of the large amount of work that involved travel from location to location for training and coordination, the protester provided no system for verifying where its personnel were at any particular time and how long they spent at that location.

evidence supporting its approach; provided no method for analyzing data to adjust its model and approach as circumstances changed; and raised significant concern about the protester's basic approach to the work.

The protester contends that the agency applied unstated criteria in its evaluation. The protester notes that the agency downgraded San Diego State's technical proposal for failure to provide evidence or data to support its approach, or to provide a method for integrating data generated during performance into its approach. The protester argues that the solicitation contained no requirement for an offeror to submit data in support of its approach.

The record shows that the evaluators were of the opinion that the protester's approach was somewhat outmoded and were concerned that the protester had not refined that approach to address the specific needs of the service area. The agency found no evidence that the protester had incorporated its own experience into its model or that it proposed to use data generated during contract performance to update and adjust that model if the model proved unworkable, as the evaluators deemed possible. The evaluators simply were uncertain whether the approach was valid, and while they did not consider it a deficiency, they did extend the protester the opportunity to demonstrate either the validity of the model or flexibility in modifying the model to accommodate the real-world needs of region 14. The protester failed to provide support for its approach or indicate a willingness and method for modifying the approach to adjust to experience.

Under these circumstances, there is no support for the protester's contention that the agency applied unstated evaluation criteria. The solicitation specifically required offerors to submit an explanation of their proposed technical approach and required detail sufficient "to fully explain your proposed technical approach or method." Offerors also were required to provide information demonstrating their understanding of important events or tasks. The requirement to support the chosen approach was therefore clearly set forth in the solicitation. The agency reasonably had concerns over the protester's approach, and its request for supporting data was consistent with the solicitation instructions; responding to the agency's concerns was part of the protester's obligation to demonstrate the merits of its proposal. In light of the protester's failure to respond adequately to the agency's concerns, it was reasonable and consistent with the solicitation for the agency to consider the protester's approach as less desirable in terms of "responding to the scope of work and in addressing the objectives of the contract."

The protester also asserts that the agency unfairly criticized its offer for proposing part-time personnel. Our Office convened a factfinding hearing to explore the issues concerned in this case; at that hearing, the agency explained that it was not the use of part-time personnel per se that concerned it, but the lack of any controls over the hours and locations at which those personnel worked. This explanation is supported by the written record; in any event, it is not unreasonable for an agency to prefer and to give higher scores to a proposal for full-time, as opposed to part-time, personnel. See Honeywell, Inc., B-238184, Apr. 30, 1990, 90-1 CPD ¶ 435. The agency states that this concern arose under the category of project management (not personnel, as the agency had advised the protester during a debriefing), as part of the evaluation of mechanisms to provide for quality control. This concern was not inconsistent with the evaluation criteria, and we conclude that the evaluation was both reasonable and consistent with those criteria.<sup>2</sup>

In its objection to the selection decision, the protester asserts that the agency did not consider whether the awardee's proposal was worth the additional cost involved in contracting with Cal Poly. Further, the protester questions statements in the narrative evaluation which describe the awardee's advantage in the personnel area as worth the cost equivalent of .3 trainers (based on the agency's estimate that it could take the protester a year to hire the additional bilingual language instructor and dividing that 1-year period over the term of the contract). San Diego State argues that the costs associated with this additional effort should have been applied to the awardee's proposal, since the San Diego State proposal actually had the higher technical score for personnel.

Even where a source selection official does not specifically discuss the technical/cost tradeoff in the selection decision document, we will not object to the tradeoff if it is clearly supported by the record. Varian Assocs., Inc., B-238452.4, Dec. 11, 1990, 90-2 CPD ¶ 478. In this regard, the narrative assessment, in which all the evaluators concurred, supports the selection official's finding that the technical superiority of the awardee's proposal justified

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<sup>2</sup>The protester also notes that the evaluators incorrectly stated that San Diego State had not identified the authors of each section of the proposal, as required by the solicitation instructions. The agency states, however, that the evaluators were advised of this error; the comment does not appear in the narrative summary submitted to the selection official and the error had no apparent affect on the overall evaluation and selection decision.

the extra cost, an estimated \$230,000 over the 3 year contract period. Further, the narrative assessment found that, contrary to the numerical scoring, the Cal Poly proposal was superior in the area of personnel. There is nothing unreasonable about the agency's reliance upon the narrative assessment, even where that assessment differs somewhat from the point scoring; numerical point scores are useful only as guides to intelligent decisionmaking, and may be expected to reflect the disparate, subjective judgments of the evaluators. Bunker Ramo Corp., 56 Comp. Gen. 712 (1977), 77-1 CPD ¶ 427. The selection of the higher-rated Cal Poly proposal was therefore reasonable and consistent with the selection criteria, which emphasized technical quality.

#### DISCUSSIONS

The protester asserts that in the course of discussions, the agency failed to identify clearly its concerns regarding the unfilled bilingual coordinator position and failed to alert the protester about its concerns over San Diego State's use of part-time staffing. Initially, the agency notes that there was nothing to discuss concerning the bilingual coordinator, since San Diego State's plan to fill the position after award was a weakness inherent in its proposal; as with preferring full-time to part-time personnel, we see nothing unreasonable about scoring a proposal higher for proposing current employees than for proposing people yet to be hired. See Federal Micro Sys., Inc., B-251243, Mar. 18, 1993, 93-1 CPD ¶ \_\_\_\_; Tracor Flight Sys., Inc., B-245132, Dec. 17, 1991, 91-2 CPD ¶ 549.

With regard to San Diego State's use of part-time staffing, we have reviewed the record and agree that the agency's concern was not specifically raised. However, we find no evidence that the protester was prejudiced by the agency's failure to apprise San Diego State of its concerns, since the area of project management was a relatively minor area of the evaluation, and the agency reasonably viewed the awardee as superior in the other three areas of the technical evaluation; further, all three evaluators awarded the protester 8 of 10 possible points in the area. There is therefore no evidence that this concern had any meaningful affect on the scoring.<sup>3</sup>

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<sup>3</sup>At the factfinding hearing, the evaluators testified that they disagreed among themselves with respect to which of the evaluation categories applied to their concerns regarding the protester's control of part-time personnel. Some of the raw score sheets discuss part-time personnel under the personnel area, but the consensus evaluation and the narrative describe the problem as related to quality control, falling under the project management category.

## ACCEPTABILITY OF THE AWARDEE'S PROPOSAL

The protester argues that the awardee's proposal did not meet solicitation requirements in two areas, the amount of staff time dedicated to task 5.1, and the methods for monitoring performance by proposed subcontractors.

With regard to its first challenge, the protester contends that the statement of work requires a contractor to dedicate at least 50 percent of professional staff time to task 5.1 of the statement of work, training and technical assistance, the third paragraph of which states as follows:

"The contractor shall provide technical assistance and training to local educational agencies (LEAs) and to state educational agencies (SEAs) upon request. The MRC contractor shall expend a minimum of 50 [percent] of the total effort in providing direct training and technical assistance to LEAs."

The protester argues that in calculating whether a proposal complies with the 50 percent requirement, the agency must calculate whether the effort proposed for task 5.1 equals 50 percent of the total effort proposed for all 13 tasks under the RFP; using this formula, the awardee's proposal does not satisfy the requirement. In the alternative, the protester states that even if the "total effort" to be considered is limited to the effort involved in task 5, the awardee's proposed hours for task 5.1 do not equal 50 percent of the task 5 effort.

The agency offers a third interpretation of the provision. According to the agency, whether an offeror complies with the requirement depends on whether the hours proposed for all four subtasks listed under task 5--not just task 5.1--are equal to 50 percent of the hours proposed for all 13 tasks under the RFP. The agency's interpretation of the provision is broader than the protester's; instead of requiring an offeror to concentrate its proposed hours under task 5.1, the offeror could rely on the total hours proposed for all four subtasks under task 5 to satisfy the 50 percent requirement.

We need not decide which is the correct interpretation of the provision. Our Office will not sustain a protest based on a change or relaxation of a requirement unless there is evidence of resulting prejudice to the protester, i.e., that the protester would have altered its proposal to its competitive advantage had it been given the opportunity to respond to the alleged alteration in requirements. Astro-Med, Inc. --Recon., B-232131.2, Dec. 1, 1988, 88-2 CPD ¶ 545. At the factfinding hearing, we specifically advised

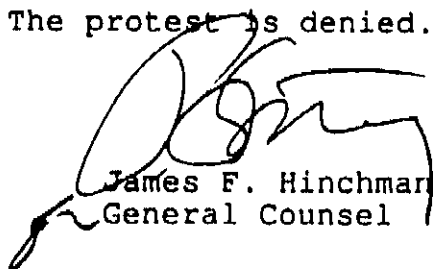


the protester that it had offered nothing to establish the possibility of prejudice in this regard. Neither in its original protest, its comments on the agency report, or its comments on the factfinding hearing, does the protester suggest that its proposal might have been any different had it not proposed devoting 50 percent of staff time to task 5.1. The record therefore provides no basis for sustaining the protest on this ground.

With regard to the protester's challenge to the awardee's proposed methods for monitoring subcontractor performance, clause L.3 of the solicitation, instructions on submitting technical proposals, advised offerors to describe in detail a task by task design for carrying out the work required; under task 1, updating the baseline management plan, offerors were to submit a detailed description of their proposed use of subcontractors, including the specific tasks and subtasks to be subcontracted, methods for monitoring performance, and methods for evaluating performance. The protester argues that beyond discussing its procedures for communicating with its subcontractor, the awardee's proposal contains no discussion of methods for monitoring performance.

The awardee's proposal states that the center will be located at U.S. campus, functioning as an independent unit of the University under the supervision of the project director. The proposal further states that the director and staff members will develop a complete set of individual task objectives at the beginning of each project year, that the project director will meet formally with all staff members on a quarterly basis to review job performance according to their objectives and performance standards, arranging formal meetings if problems are detected prior to the quarterly meetings and informal meetings as needed. Staff meetings are conducted every 2 weeks, with minutes distributed by electronic mail; a representative from the subcontractor will attend staff meetings at Pomona once a month "to facilitate coordination and communication between the two offices," with additional staff meetings to be held as necessary. The proposal sets forth a well-known and highly effective technique for performance monitoring, and we see no support in the record for the protester's challenge to the agency's evaluation of the awardee's proposal in this area.

The protest is denied.



James F. Hinchman  
General Counsel